IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.9089 OF 2005

Sadashiv Aagatrao Choure ..Petitioner

Versus

The President,

Shikshan Prasarak Mandal & ors. ..Respondents

Mr.Shrishail Sakhare for petitioner

Mr.Vineet B.Naik for respondents

CORAM : P.V.KAKADE, J.

DATE : 7TH APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner-teacher has impugned the order dated 19.9.2005 passed by Presiding Officer, School Tribunal, Solapur rejecting the application which was

Exh.19 in pending Appeal No.398/05.

3. The application was filed alleging that during the pendency of the said appeal the R/M cannot be dispensed with service without due process of law and order of termination dated 21.2.2005 bearing No.41/04-05 be stayed and the Management be directed to reinstate him in service.

4. The factual position involved in the matter shows that the appellant challenged his otherwise oral termination order dated 27.7.2004 and the same can be stayed as per the order passed below Exh.5 on 16.8.2004. As per the said Stay order the Management got him resumed on duty and he was working as Asstt. Teacher since then. Thereafter during the course of time the Management terminated his services w.e.f. 1.3.2005 vide its order dated 21.2.2005 and the petitioner wanted stay of that order in the said pending appeal contending that during the pendency of the said appeal the Management could not dispense with his service and further prayed that the Management be restrained from terminating his services pending decision of the appeal. However, after hearing both the sides the Member of the Tribunal came to the

conclusion that granting of stay to the said termination order would not mean that the respondent had no power to deal with the petitioner-appellant under the provisions of the relevant Act governing his services, if any, contingencies arises and if the management had taken any action in pursuance of that cause, that would amount to a new cause of action for the appellant. On this basis, the application came to be dismissed.

5. I do not see any illegality in the reasoning adopted by the Tribunal as it is obvious that the subsequent order of termination of his service dated 21.2.2005 gave rise new cause of action for which petitioner was entitled to pursue his independent remedy.

6. Under the circumstances, the Petition appears to be devoid of any merits and stands dismissed with no order as to costs.